# Dun & Bradstreet (Singapore) Pte Ltd & Anor v Dun & Bradstreet (Malaysia) Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D5-22-345-93
ABDUL MALEK J
27 SEPTEMBER 1993

***Trade Marks*** *— Passing off — Identical business name — Different scope of business activity — Whether plaintiffs had established reputation and goodwill — Factors to be considered*

***Trade Marks*** *— Passing off — Identical business name — Likelihood of deception or confusion*

The first plaintiff is the Singapore subsidiary of the second plaintiff, who are members of an international group of companies known throughout the world, particularly in credit information services. The first plaintiff averred that its business had extended to Malaysia by their entering into contracts with local entities which had resulted in their acquiring a substantial reputation and goodwill in this country. As a consequence of the second plaintiff's extensive and established business, the name 'Dun & Bradstreet' had become distinctive and had been associated with the second plaintiff's business both internationally and in Malaysia. The second plaintiff had registered the trade mark for 'Dun & Bradstreet' in Malaysia and the certificate had been issued on 21 May 1987. The plaintiffs had proposed to incorporate a company here as their subsidiary by using the second plaintiff's trade mark but had discovered that they could not do so as the same name had already been taken up by the defendant on 13 March 1992. The first plaintiff further averred that prior to its incorporation, it had extended its business to Malaysia in 1989 and exhibited 31 subscription agreements entered into between the first plaintiff and various local entities between January 1989 to March 1992, the month when the defendant was first registered. Therefore, the plaintiffs applied for, inter alia, an injunction to restrain the defendant from using the name 'Dun & Bradstreet'.

The defendant, on the other hand, maintained that they were in the business of stationery and printing material supply to local entities, all of whom had no connection or contact with the plaintiffs' sphere of alleged business. The defendant averred that as the plaintiffs were not registered companies in this country, were not paying taxes here and had not obtained any permission, approval or exemption to undertake business in Malaysia, the plaintiffs had not established any presence, goodwill or reputation here.

**Held**, granting the plaintiffs' application:

(1) The plaintiffs had an interest to protect and the test was whether the public would be confused by the presence of two companies

with the same name. The important thing to remember was that from the names of the two parties, any third party dealing with either of them would have thought that the other party was the same company or a branch or extension thereof.

(2) The non-payment of taxes locally and the alleged non-compliance as regards permission, approval or exemption requirements could not be factors to establish presence, goodwill and reputation as the plaintiffs' business in Malaysia had been transacted through the first plaintiff in Singapore and it was more than likely that these considerations did not arise at all.

(3) Reputation plus some market activity in the jurisdiction was sufficient to establish a business goodwill that was entitled to protection. The plaintiff had entered into subscription agreements with 31 Malaysian companies here since January 1989 up to the time the defendant started using the same business name and, although the defendant's business is described as 'general trading', it could well cover the plaintiffs' activity in providing business and marketing information. However, the scope of business activity is secondary to the question of actual or implied presence in determining goodwill and reputation which, from its involvement with Malaysian companies since 1989, the plaintiffs have. There was a serious question to be tried and the balance of convenience was in favour of the injunction being granted.

**[Bahasa Malaysia summary**

Plaintif pertama merupakan anak syarikat di Singapura plaintif kedua, yang merupakan ahli kepada suatu kumpulan syarikat antarabangsa yang dikenali di seluruh dunia, terutamanya dalam perkhidmatan maklumat kredit. Plaintif pertama menegaskan bahawa perniagaannya telah berkembang ke Malaysia dengan pengikatan kontrak dengan entiti tempatan yang mengakibatkan mereka mendapat reputasi dan nama baik yang substantial di dalam negara ini. Akibat perniagaan plaintif kedua yang luas dan bertapak, nama 'Dun & Bradstreet' telah menjadi tersendiri dan telah dikaitkan dengan perniagaan plaintif kedua baik di seluruh dunia dan di Malaysia. Plaintif kedua telah mendaftarkan tanda nama untuk 'Dun & Bradstreet' di Malaysia dan sijilnya telah dikeluarkan pada 21 Mei 1987. Plaintif telah bercadang untuk memperbadankan suatu syarikat di sini sebagai anak syarikat mereka dengan menggunakan tanda nama plaintif kedua tetapi mendapati bahawa mereka tidak boleh berbuat demikian kerana nama yang sama telahpun diambil oleh defendan pada 13 Mac 1992. Plaintif pertama juga menegaskan bahawa sebelum ia diperbadankan, ia telah mengembangkan perniagaan ke Malaysia pada tahun 1989 dan telah menunjukkan 31 perjanjian langganan yang diikat di antara plaintif pertama dan berbagai entiti tempatan di antara Januari 1989 hingga Mac 1992, iaitu bulan apabila defendan telah didaftarkan buat pertama kalinya. Oleh itu, plaintif memohon, antara lain, suatu injunksi untuk menahan defendan daripada menggunakan nama 'Dun & Bradstreet'.

Defendan sebaliknya, tetap menegaskan bahawa mereka menjalankan perniagaan alat tulis dan membekalkan bahan percetakan kepada entiti tempatan, kesemuanya yang tidak berkaitan atau kena-mengena dengan sfera perniagaan plaintif. Defendan menegaskan bahawa oleh kerana plaintif tidak merupakan syarikat berdaftar di negara ini, tidak membayar cukai di sini dan tidak mendapatkan sebarang kebenaran, kelulusan atau pengecualian untuk menjalankan perniagaan di Malaysia, plaintif gagal menubuhkan sebarang kehadiran, nama baik atau reputasi di sini.

**Diputuskan**, membenarkan permohonan plaintif:

(1) Plaintif mempunyai kepentingan yang perlu dilindungi dan ujiannya adalah sama ada orang awam akan terkeliru oleh kehadiran dua syarikat dengan nama yang sama. Perkara penting yang mesti diingati ialah bahawa melalui nama kedua-dua pihak itu, mana-mana pihak ketiga yang berurusan dengan mereka akan berfikir bahawa pihak yang lain itu merupakan syarikat yang sama ataupun suatu cabangnya.

(2) Ketidakbayaran cukai tempatan dan ketidakpatuhan yang dikatakan itu berkenaan dengan keperluan kebenaran, kelulusan atau pengecualian tidak merupakan faktor yang menetapkan kehadiran dan reputasi kerana perniagaan plaintif di Malaysia telah diuruskan melalui plaintif pertama di Singapura dan kemungkinan besar bahawa pertimbangan seperti ini tidak timbul sama sekali.

(3) Reputasi serta sesuatu kegiatan pasaran di dalam bidang kuasa adalah mencukupi untuk menubuhkan nama baik perniagaan yang berhak untuk dilindungi. Plaintif telah mengikat perjanjian langganan dengan 31 syarikat di Malaysia sejak Januari 1989 sehingga masa defendan mula menggunakan nama perniagaan yang sama dan, walaupun perniagaan defendan digambarkan sebagai 'perdagangan am' ia boleh juga meliputi kegiatan plaintif yang memberikan maklumat perniagaan dan pasaran. Bagaimanapun, ruang lingkup kegiatan perniagaan adalah sekunder kepada soalan sama ada terdapat kehadiran sebenar atau tersirat dalam menentukan nama baik dan reputasi yang dipunyai oleh plaintif, melalui penglibatan mereka dengan syarikat di Malaysia sejak 1989. Terdapat soalan serius yang perlu dibicarakan dan imbangan kemudahan memihak kepada pemberian injunksi.]

[*Editorial Note*: The defendant has appealed to the Supreme Court vide Civil Appeal No 02–448–93.]

**Notes**

For cases on passing off by similarity in business names, see 12 *Mallal's Digest* (4th Ed) paras 860 and 867.

**Cases referred to**

1 *Compagnie General Des Eaux v Compagnie Generale Des Eaux Sdn Bhd* [1993] 1 MLJ 55 (folld)
2 *Esanda Ltd v Esanda Finance Ltd* [1984] 2 NZLR 748 (refd)
3 *Cavendish House (Cheltenham) Ltd v Cavendish-Woodhouse Ltd* [1970] RPC 234 (refd)
4 *Effluent Disposal Ltd v Midlands Effluent Disposal Ltd* [1970] RPC 238 (refd)
5 *Athletes Foot Marketing Associates Inc v Cobra Sports Ltd & Anor* [1980] RPC 343 (distd)
6 *Television Broadcasts Ltd v Home Guide Publication Co* [1982] FSR 505 (folld)
7 *Tan-Ichi Co Ltd v Jancar Ltd* [1990] FSR 151 (folld)

*Porres Royan* (*Shook Lin & Bok*) for the plaintiffs.
*Logan Sabapathy* (*Joseph Yeo & Logan Sabapathy*) for the defendant.

**Abdul Malek J**: Most people familiar with English names would agree that 'Dun', as opposed to the more familiar 'Dunn' or 'Dunne', and 'Bradstreet' cannot be said to be common names whether individually or together. And taken together, to my mind, they can be said to be a rarity. Accordingly, if someone came up with the trade name of 'Dun & Bradstreet', he must surely have a good explanation as to how he got that name combination.

That was the problem faced by the plaintiffs when the defendant set up business using their name on 13 March 1992. Consequently, they had filed a summons-in-chambers on 29 April 1993 asking for the following:

(1) an interlocutory injunction to restrain the defendant whether by itself, its directors, agents, servants or any of them or otherwise howsoever from doing the following acts or any of them, that is to say:

(a) using in any way in the course of trade of business or carrying on a business under the style, title and business name which comprises the name 'Dun & Bradstreet' or any name or style which includes the words 'Dun & Bradstreet' or any part or parts thereof or any other business name or style which is substantially identical with or deceptively similar to the name 'Dun & Bradstreet' or is colourably or confusingly similar thereto; and

(b) passing off or attempting to pass off and/or enabling or assisting others to pass off the business of the defendant as and for the business of the plaintiffs by the use in connection therewith of the name 'Dun & Bradstreet' or any name containing the said words or any colourable imitation thereof or so nearly resembles the same as to be calculated to deceive the trade and public and/or to induce the belief that the business carried on by the defendant is the same as the business carried on by the plaintiffs or is authorized by the plaintiffs or is in any way connected therewith or by any other means;

(2) that the defendant do within 14 days of the date of service of this order upon it whether by itself, its directors, agents, servants or any of them or otherwise howsoever, take all steps to withdraw, remove or dislodge from the register

at the Registry of Companies in Malaysia any and all registration, lodgment or any application thereof by the defendant of the name 'Dun & Bradstreet' or any other name bearing or resembling the name 'Dun & Bradstreet' as the name of the defendant and to do all such acts and execute all such documents as may be necessary or desirable to be done or executed in order to cause the defendant to change its name from 'Dun & Bradstreet (Malaysia) Sdn Bhd' to some other name not incorporating the words 'Dun & Bradstreet' or any words substantially identical with or deceptively similar to those words or either of them and to have the said change of name registered in the relevant Registry of Companies in Malaysia;

(3) alternatively, that the Registrar of Companies be directed to take such steps to have the words 'Dun & Bradstreet' removed or deleted from the Register as part of the defendant's name;

(4) that the defendant do forthwith destroy or cause to destroy all stationery, printed matters, letterheads, signboards and business cards bearing the words 'Dun & Bradstreet' in the possession, control or custody of the defendant, its directors, servants or agents of the said materials or articles;

(5) that the costs of and incidental to this application be costs in the cause; and

(6) such further or other relief as this honourable court may deem fit.

In the supporting affidavit deposed by the general manager of the first plaintiff, he had averred that the plaintiffs are members of an established group of international companies known throughout the world and enjoying a substantial reputation particularly in credit information services. Apart from the plaintiffs, the other members include Dun & Bradstreet Corporation and Dun & Bradstreet Information Services.

He had further deposed that the first plaintiff is the Singapore subsidiary of the second plaintiff and the former's business had extended to Malaysia by their entering into contracts with local entities which had resulted in their acquiring a substantial reputation and goodwill in this country. Similarly, he stated that as a consequence of the second plaintiff's extensive and established business, the name 'Dun & Bradstreet' had become distinctive and has been associated with the second plaintiff's business both internationally and in Malaysia.

He had also exhibited the second plaintiff's trade mark registration, namely, No M/90239 for 'Dun & Bradstreet' in Malaysia where the certificate had been issued on 21 May 1987 after being applied for on 13 April 1981.

It has been further averred in the affidavit that by virtue of the first plaintiff's business interests in Malaysia and the favourable prospects in this country, the plaintiffs had decided to expand their business in Malaysia by using the second plaintiff's trade mark for a company which they had proposed to incorporate here as their subsidiary but had discovered that they could not do so as the same name had already been taken up by the defendant on 13 March 1992.

For effect, it is also appropriate to reproduce paras 11–22 of the same affidavit which reads :

11 I verily believe that the defendant has not carried on and is not carrying on any form of business activity save as herein deposed. Further, to the best of my knowledge, the defendant is a 'shelf company' with a paid-up capital of RM2 only.

12 The nature of the business of the defendant has been described as 'general trading'.

13 The defendant and/or its agents or servants have without the authority or consent whatsoever given by the plaintiffs caused the defendant to be incorporated as aforesaid. The defendant has deliberately chosen the plaintiffs' corporate names. It is obvious that such acts of the defendant are and have been conceived to utilize the plaintiffs' reputation and goodwill. I aver that the defendant's choice of business name is made mala fide and for no other reason than to misappropriate the reputation and goodwill of the plaintiffs.

14 I verily believe that the defendant and/or its agents or servants were, at the time of incorporating the defendant, well aware of the reputation and goodwill of the plaintiffs in this country and internationally. I have also been informed by Mr John Lawler, a director of Dun & Bradstreet Information Services, another member of the group, that his investigation at the Registry of Companies revealed that the defendant had been registered by a company named Business and Search Information Services Sdn Bhd (hereinafter referred to as 'BASIS'), a former correspondent of the plaintiffs in Malaysia. The managing director of BASIS, Mr Steven How, has upon being questioned by me, acknowledged the complicity of the directors of BASIS in the registration of the defendant and stated that their purpose was to sell the business for RM3,000.

15 Further, I aver that the acts of the defendant are calculated to confuse and deceive prospective clients of the plaintiffs that the defendant is connected or associated with the plaintiffs when in actual fact there is no such connection or association whatsoever.

16 The plaintiffs are also extremely concerned that the trade and public would be misled into believing that any services or goods offered by the defendant have been endorsed or approved by the plaintiffs and thereby result in damage to the reputation and goodwill of the plaintiffs. At all material times and throughout their histories, the plaintiffs have ensured that services or goods provided by them are of a high quality which explains the success of the plaintiffs' businesses.

17 The plaintiffs have, upon discovery of the use by the defendant of the name 'Dun & Bradstreet', instructed their solicitors, Messrs Shook Lin & Bok to issue a cease and desist letter to the defendant on 25 March 1992 and 20 June 1992. Now produced and shown to me marked 'EF3' and 'EF4' are copies of the said letters dated 25 March 1992 and 20 June 1992 respectively.

18 The plaintiffs' solicitors were unable to obtain particulars of the defendant from the Registry of Companies at the time the first cease and desist letter was sent out. At that time, the defendant had yet to be listed on the index book at the Registry of Companies and thus no search could be made. Hence, the plaintiffs' solicitors attempted to send the first cease and desist letter dated 25 March 1992 to the defendant, care of BASIS, which they had reason to believe was the company that incorporated the defendant. In a letter dated 27 March 1992, BASIS refused acceptance of the cease and desist letter and returned it to the plaintiffs' solicitors. Now produced and shown to me marked 'BP5' is a copy of the said letter dated 27 March 1992.

19 An official search from the Registry of Companies containing company information on the defendant was only received by the plaintiffs' solicitors on 19 June 1992. A second cease and desist letter dated 20 June 1992 was then promptly sent to the defendant's registered address. A reply dated 6 July 1992 was received by the plaintiffs' solicitors from the defendant's solicitors, a copy of which is now produced and shown to me marked 'EF6'.

20 The acts complained of above against the defendant are dishonest devices calculated and intended by the defendant to misappropriate the proprietary rights of the plaintiffs and to take advantage of the plaintiffs' reputation and goodwill and for no other reason.

21 Further, it is inevitable that serious loss and irreparable damage will be suffered by the plaintiffs as a result of the defendant's unlawful use of the plaintiffs' corporate name.

22 The plaintiffs hereby agree to any order which this honourable court may make as to damages in case this court shall hereafter be of the opinion that the defendant has wrongfully sustained damages by reason of the granting of the injunction as prayed.

In another affidavit filed on 30 June 1993, the country manager of Dun & Bradstreet Information Services (M) Sdn Bhd, set up in July 1992, had stated that it is a member of the Dun & Bradstreet International group of companies established in 1857 with two million customers worldwide and which is a world leader in providing business and marketing information, business education seminars and receivable-management in more than 30 countries worldwide including Malaysia with a turnover in excess of US$5 billion in 1991.

He had further averred that prior to its incorporation, the first plaintiff had extended its business to Malaysia in 1989 and had, on 1 December 1990, placed an advertisement in the *New Straits Times* in Malaysia recruiting candidates for the position of sales executive whose responsibilities include managing and co-ordinating the sales of the first plaintiff's business in this country. He had also exhibited no less than 31 subscription agreements entered into between the first plaintiff and various local entities between January 1989 to March 1992, the month when the defendant first got itself registered.

In their affidavit-in-reply filed on 1 July 1993, one of the directors of the defendant had asked for details of the plaintiffs' business activities in Malaysia, namely, the contracts in question, the Malaysian taxes paid for the alleged business transacted in this country and the government approvals, if any, obtained from the Malaysian authorities to underwrite such business. The defendant also maintained that they are carrying on and continuing in the business of stationery and printing material supply to and trading with local entities, all of whom have no connection with the plaintiffs or any contact with the plaintiffs' sphere of alleged business. As a matter of record, they had denied all the other allegations of the plaintiffs.

Learned counsel for the defendant had argued that they were taking issue on the passing-off action and that the trade mark had no application as it is the name and not the method or mark which is in question. The important thing to consider, he added, was whether the plaintiffs had goodwill and reputation which the court ought to recognize. As the plaintiffs were not registered companies in this country and since there were no payment of taxes here and the plaintiffs have not obtained any permission, approval or exemption to undertake business in Malaysia, learned counsel had submitted that the plaintiffs had not established any presence, goodwill or reputation here. He concluded by saying that the matter only warranted

an early trial and not one which should be subject to interim mandatory orders which could provide an irreversible effect.

I had had occasion to deal with practically identical facts in *Compagnie General Des Eaux v Compagnie Generale Des Eaux Sdn Bhd*[1] and had granted the plaintiff there the injunction asked for. In that case, too, the defendant did not actually have an office in Malaysia and had not fulfilled the requirements stipulated in the registration requirements of a representative office but that did not prevent it, in my view, from carrying on business here though its joint venture company in this country as it had done for the preceding five years. On those facts, together with a detailed deliberation of related authorities, namely, *Esanda Ltd v Esanda Finance Ltd*,[2] *Cavendish House (Cheltenham) Ltd v Cavendish-Woodhouse Ltd*,[3] and *Effluent Disposal Ltd v Midlands Effluent Disposal Ltd*,[4] my finding was that reputation plus some market activity in the jurisdiction was sufficient to establish a business goodwill entitled to protection which also applies to the facts of this case.

Learned counsel for the defendant had relied heavily on *Athletes Foot Marketing Associates Inc v Cobra Sports Ltd & Anor*[5] to support his contention that there cannot be any goodwill or reputation lost by the plaintiffs without any presence in Malaysia. In that case, it was held that 'although the final decision between the two schools of thought as to what connection with this country is required before a plaintiff can successfully maintain an action for passing-off is a difficult matter requiring mature consideration and detailed argument, and was not best dealt with on motion, the decided cases all fell within a narrow compass, and in general, supported the view that no trader can complain of passing off as against him in any territory in which he has no customers, or nobody who is in a trade relation with him'.

However, the facts are distinguishable here as the plaintiff had entered into subscription agreements with no less than 31 Malaysian companies here since January 1989 up to the time the defendant started using the same business name and, although the defendant's business is described as 'general trading', it could well cover the plaintiffs' activity in providing business and marketing information, business education seminars and receivable-management services. The scope of business activity is, of course, secondary to the question of actual or implied presence in determining goodwill and reputation which, I hold from its involvement with Malaysian companies since 1989, the plaintiffs have. This clearly shows that the plaintiffs have an interest to protect and the test is whether the public here, despite its fairly high literacy level, would be confused by the presence of two companies with the same name, and not a common name at that, more so with the defendant indulging in general trading which could include the plaintiffs' business activity. The important thing to remember was that from the names of the two parties themselves, as in this case, any third party dealing with either of them would have thought that the other party was the same company or a branch or extension thereof. The non-payment of taxes locally and the alleged non-compliance as regards permission, approval or exemption requirements cannot be factors to establish presence, goodwill and reputation as the plaintiffs' business in Malaysia had been transacted

through the first plaintiff in Singapore and it is more than likely that these considerations do not arise at all. A

On the question of presence, goodwill and reputation, it is relevant to refer to two Hong Kong High Court cases. One is *Television Broadcasts Ltd v Home Guide Publication Co*,[6] where the facts were that the plaintiff, who operated a television station, had been broadcasting for some months on its Chinese language channel a popular woman's magazine-type programme called 'New Looks of Women', a rough translation of the Chinese characters. The defendant, who published a low-circulation family magazine called 'Home Guide,' announced in their March 1982 issue that they were changing the name of the magazine to the same characters as used on the plaintiff's programme. Relevant factors to consider were that the subject matter of the programme and the magazine were similar, the plaintiff had contemplated publishing a magazine in association with the programme, and already did so in connection with another programme, and both parties intended to form clubs under the name. In support of their claim for passing off, the plaintiff contended that the known practice of television companies producing magazines in conjunction with programmes would lead to the belief among the viewing public and potential viewers that the two were associated. There was a strong likelihood that the high reputation of the programme would suffer, since it had no control over the editorial policy, content, features, etc, of the defendant's magazine. The defendant contended that the new title of their magazine was merely descriptive of the contents, and that there was little likelihood of confusion; it said that its readership was not precisely the same as the plaintiff's viewing public, the defendant's name appeared at the bottom of the front cover and the Chinese characters in issue were printed differently. It further submitted that the parties were not involved in a common field of activity. It was held, in granting interlocutary relief, that: B C D E F

(1) the defendant's intention was to deceive the public into thinking that the programme and magazine were linked (*Slazenger v Feltham* (1889) 6 RPC 531 referred to);
(2) there was a sufficient association between the parties' fields of activity to lead to confusion among the public (*Fletcher Challenge Ltd v Fletcher Challenge Pty Ltd* [1982] FSR 1 approved and applied); G
(3) the loss to the plaintiff would be likely to be unquantifiable in terms of damage to its reputation and loss of potential readers and members for its magazine and club respectively (*Henderson v Radio Corp Pty Ltd* [1969] RPC 218 approved);
(4) there was no evidence to show that the defendant would be able to pay the plaintiff's damages if an injunction were not granted and the latter were to win at trial; and H
(5) the preservation of the status quo also favoured granting the relief.

In *Tan-Ichi Co Ltd v Jancar Ltd*,[7] the plaintiffs were owners of a chain of Japanese restaurants in Japan called 'Ten-Ichi' or 'Tempura Ten-Ichi' written in a certain style in characters. The defendants opened a Japanese restaurant in Hong Kong called 'Ten-Ichi' written in identical style of ideograms as that of the plaintiffs. I

A The defendants admitted obtaining placemats bearing the plaintiff's name and characters from one of the restaurants in Japan and that they had deliberately chosen to copy the name and the characters. The plaintiff brought proceedings in passing off. The defendants, inter alia, contended that although the plaintiffs had a reputation in Hong Kong, they had no goodwill which could be damaged and hence had suffered no actionable damage. Further, even if damage had been caused it had occurred outside the jurisdiction and was therefore not recoverable. In granting interlocutary relief, it was held that:

(1) the plaintiffs had established that they possessed both reputation and goodwill which could be protected in Hong Kong. By the defendants' conduct they had lost the opportunity to control and develop the impact of that local reputation and would thus lose customers;

(2) there were Japanese people in Hong Kong, both tourists and residents. The plaintiffs had established that damage to their goodwill might occur both in Hong Kong and later, in Japan. Such damage was recoverable by an action in passing off in Hong Kong (*Star Industrial Co Ltd v Yap Kwee Kor* [1976] FSR 256 explained);

(3) the balance of convenience favoured the grant of interlocutary relief. (Observed: 'This is an evolving field of law ... a court must respond to the changes which have occurred in international communications. The large number of tourists crossing and recrossing boundaries; the speed and efficiency of modern technology which cause business reputation to be more widely spread and recognized than in the past. Courts in other jurisdictions have responded to the change...)

The facts are so much stronger here as, apart from the closer proximity between Singapore and Malaysia compared to Japan and Hong Kong, the first plaintiff in Singapore had in fact been dealing with about 30 companies in Malaysia for more than three years.

To my mind, there was a serious question to be tried and the balance of convenience was in favour of the injunction being granted as applied for by the plaintiffs. I had accordingly granted the order in terms of the application but, although I had omitted to state so, it is with the usual undertaking for damages which, although is not contained in the order, is implied, especially so when the plaintiffs had already agreed to it in their supporting affidavit. By consent of both parties on 22 September 1993, stay had been granted on the mandatory orders pending the disposal of the appeal to the Supreme Court.

*Application allowed.*

Reported by Anne Khoo